ARNOLD & PORTER
LAURENCE J. HUTT (State Bar No. 66269)
BRIAN K. CONDON (State Bar No. 138776)
777 South Figueroa Street, 44th Floor
Los Angeles, California 90017-5844
Telephone: (213) 243-4000
Facsimile: (213) 243-4199

OF COUNSEL:

ARNOLD & PORTER
HADRIAN R. KATZ
HELENE T. KRASNOFF
555 Twelfth Street, N.W.
Washington, D.C. 20004-1202
Telephone: (202) 942-5000

STEVEN B. FABRIZIO
RECORDING INDUSTRY ASSOCIATION OF AMERICA, INC.
1300 Connecticut Avenue, N.W., Suite 300
Washington, D.C. 20036
Telephone: (202) 775-0101

Attorneys for Plaintiffs
Recording Industry Association of America, Inc.
and Alliance of Artists and Recording Companies

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

RECORDING INDUSTRY ASSOCIATION OF AMERICA, INC., a New York not-for-profit corporation, and ALLIANCE OF ARTISTS AND RECORDING COMPANIES, a Pennsylvania not-for-profit corporation, Plaintiffs, v. DIAMOND MULTIMEDIA SYSTEMS, INC., a California corporation, Defendant.	Case No. 98-8247 ABC (RZx) COMPLAINT FOR VIOLATION OF THE AUDIO HOME RECORDING ACT

ENTERED ON ICMS 10/13/98

Plaintiffs Recording Industry Association of America, Inc. ("RIAA") and Alliance of Artists and Recording Companies ("AARC") bring this action pursuant to 17 U.S.C. § 1009 to obtain declaratory and preliminary and permanent injunctive relief from defendant, Diamond Multimedia Systems, Inc. ("Diamond"), for violation of the Audio Home Recording Act, 17 U.S.C. § 1001 et seq. ("AHRA"). The AHRA is a comprehensive statutory scheme enacted in 1992 to regulate the manufacture, importation, and distribution of digital audio recording devices. In violation of the AHRA, Diamond is importing into and distributing, or manufacturing and distributing, a digital audio recording device, the Rio PMP 300 ("Rio"), without complying with any of the requirements of the AHRA.

Nature of the Case

1. This is a civil action brought pursuant to the Copyright Law of the United States, 17 U.S.C. § 101 et seq., and specifically the Audio Home Recording Act, 17 U.S.C. § 1001 et seq., seeking declaratory and injunctive relief based upon the manufacture, importation, and distribution of devices (a) that defendant has not registered with the Copyright Office, as required by the AHRA, (b) for which defendant has not paid royalties, as required by the AHRA, and (c) in which defendant has failed to incorporate a serial copy management system or the functional equivalent, as required by the AHRA. As a result of these violations of the AHRA, defendant is in the process of manufacturing, importing, selling, or distributing devices that facilitate and encourage the unauthorized digital copying of copyrighted sound recordings.

Jurisdiction and Venue

2. This Court has jurisdiction of this action under 28 U.S.C. § 1338 (a) and 15 U.S.C. § 1121.

3. This Court has personal jurisdiction over defendant because it maintains an office in this district and distributes its products for sale in this district.

4. Venue is properly laid in this District pursuant to 28 U.S.C. § 1391 (b) and (d).

Parties

5. Plaintiff Recording Industry Association of America, Inc. is a not-for-profit trade association formed in 1952 and duly organized under the laws of New York. The RIAA maintains an office in this district.

6. The RIAA's members are record companies that, among other things, are the copyright proprietors of or owners of exclusive rights under copyright to sound recordings of musical works that have been embodied in digital musical recordings or analog musical recordings lawfully made and distributed in the United States. The RIAA's member companies together create, manufacture, or distribute more than ninety percent of all legitimate sound recordings sold in the United States. Among other things, the RIAA represents the collective interests of its membership before legislative, regulatory, and judicial bodies with respect to federal, state, and local proceedings affecting the entire record industry.

7. Plaintiff Alliance of Artists and Recording Companies is a not-for-profit corporation duly organized under the laws of Pennsylvania. AARC equally represents the interests of recording artists and record companies, and is the leading representative of featured recording artists and record companies with regard to the Audio Home Recording Act. Under the AHRA, AARC's members are entitled to certain royalty payments pursuant to the AHRA.

8. Plaintiffs have standing to maintain this action in that each is an "interested copyright party" within the meaning of 17 U.S.C. § 1001 (7) (D) and 17 U.S.C. § 1009, specifically, an association or other organization representing the owners of exclusive rights to reproduce sound recordings of musical works embodied in digital or analog musical recordings that are lawfully made and have been distributed.

9. Defendant Diamond Multimedia Systems, Inc. is a corporation duly organized and existing under the laws of California with its principal place of business in San Jose, California and an office in Los Angeles, California. Defendant also has at least five other offices in the United States and maintains sales, marketing, engineering or technical support facilities worldwide. Defendant is qualified to transact business in the State of California.

10. Upon information and belief, defendant has developed, is manufacturing or has manufactured, and will be distributing for sale in the United States a device called the Rio PMP 300 ("Rio"). The Rio device is described on Diamond's Web site, http://diamondmm.com/products/current/rio.cfm, as an "MP3 music player . . . that stores up to 60 minutes of digital quality sound." Diamond describes MP3 as the "most popular audio-compression format on the Internet" that "delivers the original CD-quality sound." The Rio device is designed to copy music in MP3 format from a computer to the Rio device's internal memory cards, and thereafter to play the music through attached headphones. The music copied into the Rio memory cards can be uploaded to a computer. The Rio memory cards, upon information and belief, can also be removed and transferred to another device.

11. Defendant is currently taking orders for the Rio device on its Web site. Upon information and belief, Rio devices will be shipped to customers in October or early November of 1998, and will also be distributed to major retailers for sale throughout the United States.

12. On its Web site, defendant markets and promotes the Rio as a device consumers will use to record and play music in the MP3 format that they have downloaded from the Internet. Because the overwhelming majority of MP3 music files on the Internet are unauthorized and infringing, the Rio will facilitate and encourage the unlawful trafficking of infringing MP3 music files.

13. Defendant's Web site indicates that another use of the Rio device is to "copy tracks from your personal CD collection." Defendant states that Rio will include "MusicMatch" software that will enable Rio users to convert the copyrighted sound recordings on their music CD's to MP3 format, a process typically referred to as "ripping." On its Web site, http://www.musicmatch.com, MusicMatch advertises that its software "lets you record music from your CD collection and from the internet, and save all your favorite tracks into a sophisticated digital music database on your mutimedia PC."

14. Defendant also advertises on its Web site that it will be selling, for use with the Rio, removable flash memory cards in half-hour and one hour configurations. Upon information and belief, these cards will allow Rio users to exchange and recopy MP3 files that are copied onto the cards.

Count I
(Violation of 17 U.S.C. § 1001 et seq.)

15. Paragraphs 1 through 14 are incorporated herein by reference.

16. In order to prevent massive unauthorized digital copying of copyrighted materials, Congress enacted the Audio Home Recording Act of 1992, 17 U.S.C. § 1001 et seq. ("AHRA"). The AHRA imposes a variety of requirements and restrictions regarding the importation, manufacture, and distribution of digital audio recording devices.

17. The AHRA prohibits anyone from importing into and distributing, and from manufacturing and distributing in the United States, any digital audio recording device unless such person files notice with the Register of Copyrights, pays royalties on each such device, and meets other statutory requirements. The AHRA further prohibits the importation, manufacture, or distribution of any digital audio recording device that does not conform to the Serial Copy Management System ("SCMS") or a system that has the same functional characteristics. The purpose of SCMS is to prevent multigenerational copies of copyrighted digital audio recordings, that is, to prevent copies of copyrighted recordings from being recopied.

18. Defendant is violating the AHRA by importing and distributing or manufacturing and distributing, and offering for sale a device, the Rio device, which is designed and marketed for the primary purpose of, and that is capable of, making digital audio copied recordings for private use, without satisfying the requirements of the AHRA.

19. By reason of defendant's violation of the AHRA as described herein, plaintiffs and their member companies have sustained and will sustain substantial, immediate, and irreparable injury and harm. The acts of defendant, unless enjoined, will continue to cause plaintiffs and their member companies great and irreparable harm. Plaintiffs have no adequate remedy at law.

WHEREFORE, plaintiffs pray for judgment and relief as follows:

1. For a declaration that defendant's manufacture, importation, distribution, marketing, and sale of the Rio device violates the Audio Home Recording Act;

2. For a preliminary and permanent injunction enjoining defendant and its agents, servants, employees, officers, directors, attorneys, successors, and assigns, and all persons acting in concert or participation with them, from directly or indirectly violating the AHRA, including by importing, manufacturing, advertising for sale, or distributing devices subject to the AHRA, including Rio devices, without complying with the requirements of the AHRA;

3. For prejudgment interest according to law;

4. For plaintiffs' costs in this action and reasonable attorneys' fees incurred herein; and

5. For such other and further relief as the Court may deem just and proper.

Dated: October 8, 1998

ARNOLD & PORTER

By:

BRIAN K. CONDON
Attorneys for Plaintiffs Recording Industry Association of America, Inc. and Alliance of Artists and Recording Companies